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AND
BRIEFS

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No. 14-15

In The

Supreme Court of the United States

RICHARD ARMSTRONG, ET AL.,
Petitioners,

v.

EXCEPTIONAL CHILD CENTER, INC., ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICUS CURIAE[1]

Amicus Constitutional Accountability Center (CAC) is a think tank, public interest law firm, and action center dedicated to fulfilling the progressive promise of our Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. CAC has a strong interest in constitutional federalism and in preserving the federal powers granted by the Constitution.

INTRODUCTION AND SUMMARY OF ARGUMENT

Where, as here, a state law conflicts with federal law, the Supremacy Clause requires federal courts to step in to prevent unlawful state action. Armstrong asks the Court to abandon this clear constitutional command, urging this Court to view the Supremacy Clause as simply a "choice-of-law rule," Pet'rs Br. at 17, that gives no authority to the federal courts to prevent states from enforcing preempted state laws. That argument cannot be squared with the text and history of the Constitution nor with more than two centuries of this Court's precedent recognizing the

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[1] The parties have consented to the filing of this brief and their letters of consent have been filed with the Clerk. Under Rule 37.6 of the Rules of this Court, *amicus* states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

vital responsibility of the federal judiciary to maintain the federal-state balance.

From the very beginning of our Constitution's history, federal courts were designed to be the frontline against unlawful acts committed by state governments. When the Framers wrote our founding charter more than two centuries ago, they were particularly concerned about unlawful actions by state governments, which had gone unchecked under the dysfunctional government of the Articles of Confederation. They included in the Supremacy Clause a mandate for the judicial branch to void "any Thing" in state law to the "Contrary" of federal law. U.S. Const. art. VI, cl. 2. Judicial review is hard-wired in the text of the Supremacy Clause. As the debates in Philadelphia show, the Framers consciously chose judicial review of state laws as the means for enforcing constitutional limits and ensuring the supremacy of federal law. As James Madison explained, "[t]hat causes of a federal nature will arise, will be obvious to every gentleman who will recollect that the states are laid under restrictions, and that the rights of the Union are secured by these restrictions." 3 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 532 (Jonathan Elliot ed., 1836) [hereinafter *Elliot's Debates*].

Armstrong's argument that, as a matter of separation of powers and federalism, the courthouse doors must be closed to the plaintiffs in this case, Pet'rs Br. at 14, turns fundamental constitutional principles on their head. It is "emphatically the province and duty of the judicial department to say what the law is," *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803), and enforce the "great principle" that "the

constitution and the laws made in pursuance thereof are supreme; that they control the constitution and laws of the respective states, and cannot be controlled by them." *M'Culloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 426 (1819). In establishing our Constitution, the Framers "split the atom of sovereignty," *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring), creating a vibrant federalism that gave broad powers to the states while ensuring that they respected constitutional limits and the supremacy of federal law. Armstrong and his *amici* would improperly deny the courts their historic role in maintaining this constitutional balance of federal-state power.

It makes no difference to this analysis that the state law at issue here is preempted by a federal law enacted pursuant to congressional Spending Clause authority. Ensuring principles of federal supremacy is as fundamentally important when Congress exercises its authority under the Spending Clause as when it exercises other enumerated powers. The Framers recognized that the power to spend for the general welfare was an "indispensable ingredient in every constitution," observing that "[m]oney is considered as the vital principle of the body politic; as that which sustain its life and motion and enables it to perform its most essential functions." The Federalist No. 30, at 156 (Alexander Hamilton) (Clinton Rossiter ed., 1961). In the Spending Clause context, as elsewhere, it is imperative that the Supremacy Clause be applied properly. "[T]he whole jurisprudence of preemption" is of vital importance to "maintaining the federal balance." *United States v. Lopez*, 514 U.S. 549, 578 (1995) (Kennedy, J., concurring).

For more than 200 years, the judicial branch has permitted suits, including those brought by private parties, to challenge state laws that allegedly violate federal law and requirements. As Chief Justice John Marshall explained, the Framers expected that some state laws would conflict with federal statutes and in "every such case" the law of the state "must yield" to federal law. *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 211 (1824). Where state action violates federal law, injunctive relief has long been viewed as the appropriate remedy "to arrest the injury" and "prevent the wrong." *Osborn v. Bank of United States*, 22 U.S. (9 Wheat.) 738, 845 (1824). An unbroken line of cases reflects that "plaintiffs may vindicate pre-emption claims by seeking declaratory and equitable relief in the federal district courts through their powers under federal jurisdictional statutes." *Golden State Transit Corp. v. City of Los Angeles*, 493 U.S. 103, 119 (1989) (Kennedy, J., dissenting). These cases accord preemptive authority to federal laws passed pursuant to the Spending Clause as well as other exercises of Congress's enumerated powers.

Armstrong and his *amici* concede that federal courts may invoke equitable power to vindicate the supremacy of federal law in certain circumstances, but urge this Court to radically revise its precedents here to close the courthouse doors to plaintiffs in this case. These arguments, however, devalue fundamental principles of constitutional supremacy enshrined in the Supremacy Clause, ignore the role of the courts in our constitutional scheme as envisioned by the Framers, and misstate equity's historic role in preventing constitutional wrongs. The court of appeals properly held that plaintiffs could invoke the Supremacy Clause to prevent Idaho from contravening

the Medicaid statute's requirement that reimbursement rates be "consistent with efficiency, economy, and quality of care," 42 U.S.C. 1396a(a)(30)(A), and that judgment should be affirmed.

ARGUMENT

I. THE TEXT AND HISTORY OF THE SUPREMACY CLAUSE GIVE FEDERAL COURTS THE POWER OF JUDICIAL REVIEW TO MAINTAIN THE SUPREMACY OF FEDERAL LAW.

The Supremacy Clause provides that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. By including in the Constitution a sweeping declaration of constitutional supremacy and giving to courts the power to declare preempted state law null and void, the Framers provided that "conflicts between state and federal law" would be "resolved by principled adjudication, rather than political will or force." Bradford R. Clark, *Separation of Powers As a Safeguard of Federalism*, 79 Tex. L. Rev. 1321, 1348 (2001).

1. The Supremacy Clause, together with Article III, which provides for an independent federal judiciary with the power to hear all cases arising under "this Constitution, the Law of the United States, and Treaties made under their Authority," U.S. Const. art.

III, § 2, cl. 1, ensures that states respect the supremacy of federal law. As James Madison observed, "the General Convention regarded a provision within the Constitution for deciding in a peaceable & regular mode all cases arising in the course of its operation, as essential to an adequate System of Govt. that this intention is expressed by the articles declaring that the federal Constitution & laws shall be the supreme law of the land, and that the Judicial Power of the U.S. shall extend to all cases arising under them." Letter from James Madison to Thomas Jefferson (June 27, 1823), *in* 9 *The Writings of James Madison* 137, 142 (Gaillard Hunt ed., 1910); *see also* The Federalist No. 39, *supra*, at 213 (James Madison) (explaining that "in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide is to be established under the general government").

The "parallel language of the 'Arising Under' and Supremacy Clauses was intentional and structurally crucial," James S. Liebman & William F. Ryan, *"Some Effectual Power": The Quantity and Quality of Decisionmaking Required of Article III Courts*, 98 Colum. L. Rev. 696, 708 (1998), ensuring that private parties who suffered injury at the hands of state authorities could invoke the power of judicial review to challenge state laws that conflicted with federal law. "Otherwise, any one state might repeal the laws of the Union at large." 4 *Elliot's Debates*, *supra*, at 187-88. "To permit the local laws of any state to control the laws of the Union would be to give the general government no powers at all. If the judges are not to be bound by it, the powers of Congress will be nugatory." *Id.* at 181. Without judges enforcing the promise of federal supremacy, our system of government

"would have seen the authority of the whole society everywhere subordinate to the authority of the parts; it would have seen a monster, in which the head was under the direction of the members." The Federalist No. 44, *supra*, at 255 (James Madison); *see Dodge v. Woolsey*, 59 U.S. (18 How.) 331, 355 (1855) ("Without the supreme court . . . neither the constitution nor the laws of congress passed in pursuance of it, nor treaties, would be in practice or in fact the supreme law of the land, and the injunction that the judges in every State should be bound thereby would be useless . .").

2. The Framers crafted the Supremacy Clause against the backdrop of numerous abuses of state authority under the Articles of Confederation, which established a single branch of the federal government, but contained no mechanism for ensuring federal supremacy. Under the dysfunctional government of the Articles, the federal government could not enforce its laws, prompting Alexander Hamilton to observe that a "most palpable defect of the existing Confederation is the total want of a SANCTION to its laws." The Federalist No. 21, *supra*, at 106 (Alexander Hamilton); *see id.* No. 22, at 118 (Alexander Hamilton) (explaining that "[l]aws are a dead letter without courts to expound and define their true meaning and operation"). The result, Madison lamented, is that "acts of Congs. depend[] for their execution on the will of the state legislatures," making federal laws "nominally authoritative, [but] in fact recommendatory only." James Madison, *Vices of the Political System of the United States* (Apr. 1787), *in* 9 *The Papers of James Madison* 345, 352 (Robert A. Rutland & William M. E. Rachal eds., 1975).

The Framers gathered together in Philadelphia in 1787 to correct these "vices" resulting from the lack of "effectual control in the whole over its parts." 1 *The Records of the Federal Convention of 1787*, at 167 (Max Farrand ed., 1911) [hereinafter *Farrand's Records*]. At the Convention, they extensively debated different possible means to ensure the supremacy of federal law, including use of force by the executive, a congressional veto on state laws, as well as judicial review.

Early in the Convention, Governor Edmund Randolph of Virginia proposed an initial mechanism to ensure the supremacy of federal law, recommending that the "National Legislature" be given the power "to negative all laws passed by the several States," as well as the power "to call forth the force of the Union" against a state "failing to fulfill its duty." 1 *Farrand's Records*, *supra*, at 21. While James Madison supported the legislative "negative," he strongly disagreed with reliance upon military force to resolve conflicts between federal and state law. "The use of force agst. a State, would look more like a declaration of war, than an infliction of punishment, and would probably be considered by the party attacked as a dissolution of all previous compacts by which it might be bound." *Id.* at 54. Randolph was persuaded to change his position, agreeing that the use of force would be "impracticable, expensive, [and] cruel to individuals." *Id.* at 256 (emphasis omitted). The Framers overwhelmingly preferred a "coer[c]ion of laws" to a "coer[c]ion of arms." *Id.* at 284 (Alexander Hamilton); *see* 3 *Elliot's Debates*, *supra*, at 554 (John Marshall) ("What is the service or purpose of a judiciary, but to execute the laws in a peaceable, orderly

manner, without shedding blood, or creating a contest, or availing yourselves of force?").

While Madison convinced his colleagues to relinquish the military option, he could not persuade them to embrace the use of congressional power to invalidate state laws. His reasoning in support of the congressional negation of state law met with fierce resistance, precisely because a majority of delegates preferred to rely on judicial review for this important task. As Governor Morris argued, "[a] law that ought to be negatived will be set aside in the Judiciary department. and if that security should fail; may be repealed by a Nationl. law." 2 *Farrand's Records*, *supra*, at 28. The proposal for Congress to nullify state laws was defeated by a vote of three states in favor to seven states against. *Id.* In rejecting the congressional negative, "the Framers substituted judicial review of state laws for congressional control of state legislatures." *FERC v. Mississippi*, 456 U.S. 742, 795 (1982) (O'Connor, J., concurring in part and dissenting in part).

Immediately after the defeat of the negative, Luther Martin of Maryland proposed an initial version of the Supremacy Clause, which provided that "the Legislative acts of the [United States] shall be the supreme law of the respective States [and] that the Judiciaries of the several States shall be bound thereby in their decisions, any thing in the respective laws of the individual States to the contrary notwithstanding." 2 *Farrand's Records*, *supra*, at 28-29. The Convention unanimously adopted this supremacy provision.

The Framers' decision to vest the federal courts with the responsibility to ensure the supremacy of federal law through the exercise of judicial review in law suits brought by injured private parties reflected the Framers' belief that the judiciary was the "quarter [to] look for protection from an infringement on the Constitution," 3 *Elliot's Debates*, *supra*, at 554 (John Marshall), and that review by an independent judge was the only "natural and effectual method of enforcing laws." 4 *Elliot's Debates*, *supra*, at 140 (James Iredell); *see also id.* at 158 (William Davie) ("[T]he judicial power ought to be coëxtensive with the legislative. The federal government ought to possess the means of carrying the laws into execution . . . If laws are not to be carried into execution by the interposition of the judiciary, how is it to be done?"). Access to the courts was essential to protect individual liberty, prevent government abuse, and ensure the supremacy of federal law.

Over the course of the rest of the Convention, the Framers strengthened the requirement of federal supremacy. First, the Committee on Detail subjected state constitutions as well as state laws to the requirement of federal supremacy and changed the phrase "the Judiciaries of the several States" to "the judges in the several States," imposing a personal mandate on judges to uphold federal law. 2 *Farrand's Records*, *supra*, at 183. Second, the Convention unanimously agreed to add that the United States Constitution is supreme to state laws. *Id.* at 389.

Third, the Convention broadened the language of Article III's "Arising Under" Clause to conform with the now-expanded Supremacy Clause, *id.* at 431,

"self-consciously and irrevocably forg[ing] the constitutional structural link between the front-line decisionmaking of 'the Judges in every State' under the Supremacy Clause and the supervisory decisionmaking of the federal judiciary when called upon to exercise the 'arising under' jurisdiction permitted by the judiciary article." Liebman & Ryan, *supra*, at 747. This ensured that federal as well as state courts would have the authority to vindicate the supremacy of federal law in cases brought by aggrieved individuals.

Fourth, and finally, the Committee on Style Revision replaced the words "the supreme law of the states" with the phrase "the supreme law of the land." 2 *Farrand's Records*, *supra*, at 603. As Professor Amar explains, "the implication was continental: one Constitution, one land, one People." Akhil Reed Amar, *Of Sovereignty and Federalism*, 96 Yale L.J. 1425, 1458 (1987). This change in wording left no doubt "[t]he people of the United States constitute one nation, under one government, and this government, within the scope of the powers with which it is invested, is supreme." *Lane Cnty. v. Oregon*, 74 U.S. (7 Wall.) 71, 76 (1868). The Founding generation believed that federal laws "would embody the judgment of America as a whole, as distinct from the more parochial view of any particular local part," and therefore federal statutes have "priority over any inconsistent state-law norm." Akhil Reed Amar, *America's Constitution: A Biography* 300 (2005). The Supremacy Clause establishes federal law as embodying the will of the nation's people, who are empowered to turn to the judiciary for enforcement.

In sum, the Constitution's text and history establish that providing for judicial review in cases of conflict between federal and state law was at the core of the Supremacy Clause. Armstrong and his *amici* are simply incorrect when they state that the Supremacy Clause is a "choice-of-law" or "rule of decision" provision, Pet'rs Br. at 15, 17; Texas et al. Br. at 6-7, that has nothing to do with judicial review. On the contrary, "the Convention resolved the debate over how to enforce the supremacy of federal law by reliance on the judicial duty to apply federal law in cases of conflict." *See* NGA et al. Br. at 19.[2]

3. Consistent with this text and history, Supreme Court precedent dating back to the Marshall Court establishes that courts have a constitutional obligation to maintain the federal-state balance by declaring null and void state laws that conflict with federal law.

As Chief Justice Marshall explained in *Gibbons v. Ogden*, the Constitution specifically "declar[es] the supremacy not only of itself, but of the laws made in

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[2] *Amici* NGA and Council of State Governments suggest that "authorizing private lawsuits in *all* cases of arguable federal pre-emption would replicate much of the intrusion the opponents of the negative found troubling," NGA et al. Br. at 24. That argument ignores the fundamental difference between the congressional negative the Framers rejected, which would have given Congress an unfettered power to void state laws, and the system of judicial review they wrote into the Constitution, which gave the courts the power to strike down state laws that transgressed the Constitution, duly-enacted federal laws, and treaties in cases brought by aggrieved persons. As the Constitution's text and history discussed above show, the Framers gave courts the duty to police the federal-state balance and invalidate state laws in conflict with federal law.

pursuance of it." *Gibbons*, 22 U.S. at 210. Thus, "[i]n every such case, the act of Congress, or the treaty, is supreme; and the law of the State, though enacted in the exercise of powers not controverted, must yield to it." *Id.* at 211. Accordingly, "[a] plaintiff who seeks injunctive relief from state regulation, on the ground that such regulation is pre-empted by a federal statute which, by virtue of the Supremacy Clause of the Constitution, must prevail, . presents a federal question which the federal courts have jurisdiction under 28 U.S.C. § 1331 to resolve." *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 96 n.14 (1983); *see also Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 642 (2002). Even absent a private cause of action under a federal statute or 42 U.S.C. 1983, plaintiffs may bring "pre-emption claims by seeking declaratory and equitable relief in the federal district courts through their powers under federal jurisdictional statutes." *Golden Transit Corp.*, 493 U.S. at 119 (Kennedy, J., dissenting). An aggrieved individual need not rely on those other sources of law "to vest in him a right to assert that an attempted exercise of jurisdiction or control violates the proper distribution of powers within the federal system." *Id.* at 114 (Kennedy, J., dissenting).

II. THE TEXT AND HISTORY OF THE CONSTITUTION SUPPORT THE AVAILABILITY OF EQUITABLE RELIEF TO PROHIBIT UNCONSTITUTIONAL STATE ACTION EVEN IN THE ABSENCE OF A STATUTORY CAUSE OF ACTION.

Equitable relief "'has long been recognized as the proper means for preventing entities from acting unconstitutionally.'" *Free Enter. Fund v. Public Co. Ac-*

counting Oversight Bd., 561 U.S. 477, 491 n.2 (2010) (quoting *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 74 (2001)). The power of Article III courts to issue such relief is anchored directly in the text of the Constitution and flows from equity's historic mission of preventing illegal action for which there is no adequate remedy at law. When the Framers designed our system of government, they made sure to give the federal courts the "judicial power" to enforce the Constitution and maintain the supremacy of federal law in "all Cases, in Law and Equity, arising under this Constitution[and] the Laws of the United States." U.S. Const. art. III, § 2, cl. 1. By granting courts the power to award equitable as well as legal remedies, the Framers ensured that courts would possess the "effectual power" to "restrain or correct the infractions" of the Constitution by the states. The Federalist No. 80, *supra*, at 444 (Alexander Hamilton); *see also* James E. Pfander, *Rethinking The Supreme Court's Original Jurisdiction in State-Party Cases*, 82 Calif. L. Rev. 555, 601 (1994) ("[F]ederal courts, by virtue of their authority to hear 'cases' in law and equity, would enjoy the power to 'restrain' or enjoin state infractions of the Constitution .").

By extending the "judicial Power" to "all Cases, in Law and Equity," the Framers incorporated a well-established understanding about the scope of judicial authority and the types of relief the courts could provide. Pursuant to that understanding, "[c]ourts of equity had the authority to, and did in fact, create causes of action in cases where courts of law would not issue damages." John F. Preis, *In Defense of Implied Injunction Relief in Constitutional Cases*, 22 Wm. & Mary Bill Rts. J. 1, 7 (2013). Thus, regardless whether individuals may seek *damages* for injuries

caused by constitutional violations in the absence of a statute creating a specific "cause of action," they can surely seek the sort of *equitable relief* to prevent implementation of unconstitutional state laws that Respondents seek here.

1. Dating back to the fourteenth century, England recognized two distinct types of courts: common-law courts that issued a "variety of standardized writs," each of which specified a "'complete set of substantive, procedural, and evidentiary law" that applied to the case, and equitable courts that both "enforc[ed] . claims created anew by equity" and provided "new and distinct remedies for the violation of preexisting legal rights." Preis, *supra*, at 11-12 (quoting H. Brent McKnight, *How then Shall We Reason, The Historical Setting of Equity*, 45 Mercer L. Rev. 919, 929 (1994)). By the time of the Framing, these two distinct courts were well-established on both sides of the Atlantic. *Cf.* Solon Dyke Wilson, *Courts of Chancery in the American Colonies, in* 2 *Select Essays in Anglo-American Legal History* 779, 779 (1907) ("Prior to the Revolution, courts of chancery had existed in some shape or other in every one of the thirteen colonies.").

Although common law courts would only hear cases where there was a recognized form of action, F. W. Maitland, *Equity, Also the Forms of Action at Common Law: Two Courses of Lectures* 296-300 (A. H. Chaytor & W. J. Whitaker eds., 1920), equity courts did not require that the cases they heard adhere to the set forms that were cognizable at common law, John Mitford, *A Treatise on the Pleadings in Suits in the Court of Chancery* 7-9 (2d ed. 1787). As Joseph Story explained, equity jurisdiction existed where "a wrong [wa]s done, for which there [wa]s no plain, ad-

equate, and complete remedy in the Courts of Common Law." 1 Joseph Story, *Commentaries on Equity Jurisprudence as Administered in England and America* § 49 (14th ed. 1918).

Because equity courts were concerned principally with whether a wrong had been committed, a plaintiff bringing a claim in equity did not have to show that he would be able to bring a claim at common law, or that a statute provided a "right" that would be recognized by common law courts. Rather, all a plaintiff had to show was "that the subject of the suit is such upon which a court of equity will assume jurisdiction." Mitford, *supra*, at 120-21. As Story and others explained, equity jurisdiction was quite broad, extending to cases where "the principles of law by which the ordinary courts are guided *give no right*," *id.* at 103-04 (emphasis added); *see* Story, *supra*, at § 29; 1 John Norton Pomeroy, *A Treatise of Equity Jurisprudence as Administered in the United States of America* § 424 (1881). Thus, for example, in 1491, the Archbishop of Canterbury readily disposed of an argument that he was without jurisdiction to consider a case because there would have been no right violated at common law. As he explained, "It is so in all cases where there is no remedy at the common law and no right, and yet a good remedy in equity." *Id.* at § 50 n.1 (quoting Year Book of Henry VII, folio 12); *see id.* at § 423.

In short, "[a]t the time of the American Founding, it was not uncommon for Chancery to enforce the common law through equitable remedies even where the common law might not itself make damages available." Preis, *supra*, at 15; *cf.* Deborah A. DeMott, *Beyond Metaphor: An Analysis of Fiduciary Obligation*,

1988 Duke L.J. 879, 880 (1988) ("Equity granted relief—and common law courts did not—in numerous situations involving one person's abuse of confidence reposed in him by another.").

2. When the Framers defined the "judicial Power" to include "all Cases, in Law and Equity," U.S. Const. art. III, § 2, cl. 1, they were incorporating into the Constitution this well-established understanding about the power of equitable courts to provide remedies in the absence of a common law right. Indeed, although there was little discussion about the precise meaning of those terms at the Convention, during the debates about whether to ratify the Constitution, some anti-Federalists expressed concern about giving federal judges equitable powers because of the significant power that would afford them. Letters from the Federal Farmer to the Republican III (Oct. 10, 1787), http://www.constitution.org/afp/fedfar03.htm.

The first Congress subsequently identified the initial set of cases in which the courts could exercise this power by giving the courts diversity jurisdiction over suits "in equity" in the Judiciary Act of 1789, ch. 20, § 11, 1 Stat. 73, 78. Ever since this initial grant of power, federal courts exercising their equitable powers have applied the same principles and provided the same remedies available in the High Court of Chancery in England. As this Court has explained it, "since the organization of the government," "[t]he usages of the High Court of Chancery in England, whenever the jurisdiction is exercised, govern the proceedings" in equity cases, and other than where statutes defining federal jurisdiction generally impose limits, "there is no other limitation to the exercise of a chancery jurisdiction by these courts." *Penn-*

sylvania v. Wheeling & Belmont-Bridge Co., 54 U.S. (13 How.) 518, 563 (1851); *see Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 318 (1999) ("[E]quity jurisdiction of the federal courts is the jurisdiction in equity exercised by the High Court of Chancery in England at the time of the adoption of the Constitution "); *Boyle v. Zacharie*, 31 U.S. (6 Pet.) 648, 658 (1832); *see also* Story, *supra*, at § 57.

Consistent with these basic equity principles, more than 150 years ago, this Court specifically recognized the power of federal courts to fashion equitable remedies to ensure the supremacy of federal law, including in cases where Congress had not provided any statutory right of action. *See Wheeling & Belmont-Bridge Co.*, 54 U.S. at 566 ("This compact, by the sanction of Congress, has become a law of the Union. What further legislation can be desired for judicial action? No State law can hinder or obstruct the free use of a license granted under an act of Congress. Nor can any State violate the compact by obstructing the navigation of the river. More than this is not necessary to give a civil remedy for an injury done by an obstruction."). As *Wheeling Bridge* reflects, so long as a federal court had a basis for subject matter jurisdiction, it could issue equitable remedies to maintain the supremacy of federal law in cases in which there was no adequate remedy at law. It did not matter whether Congress had provided a private right of action.

3. The relief Respondents seek here—an injunction prohibiting State officials from implementing state law that conflicts with the federal Medicaid statute—is precisely the type of relief that would have been available in equity courts at the Framing.

When equity courts had jurisdiction over a case, the question they addressed was whether the plaintiff suffered an "injury" as a result of the defendant's unlawful acts. Mitford, *supra*, at 32-33. If he did, the court could issue an injunction "to restrain the defendant from . doing any injurious act." *Id.* at 46. Applying this basic principle, courts of equity regularly issued relief to prevent injury caused by public officials engaging in *ultra vires* action, *see, e.g.*, *Hughes v. Trs. of Morden College*, 1 Vesey 188 (Ch. 1748), and courts in the early nineteenth century concluded that "relief may be given in a court of equity to prevent an injurious act by a public officer, for which the law might give no adequate redress." *Carroll v. Safford*, 44 U.S. (3 How.) 441, 463 (1845); *see, e.g.*, *Belknap v. Belknap*, 2 Johns. Ch. 463, 473 (N.Y. Ch. 1817) (based on "well settled" "jurisdiction of chancery," "chancery would restrain [commissioners] by injunction" if they "exceeded their powers"); *Baring v. Erdman*, 2 F. Cas. 784, 786 (C.C.E.D. Pa. 1834) (No. 981) (where acts of public officials "transcend the authority conferred on them by law," they are subject to control by injunction to prevent "irreparable injury"); *Frewin v. Lewis*, 4 Mylne & Craig 249, 254-55 (Ch. 1838) (equity court will prevent injury by enjoining public officials from acting "beyond the line of their authority").

Ever since this Court's decision in *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738 (1824), it has been well settled that federal courts have the authority to maintain the federal-state balance and issue injunctive relief in cases in which a state law is "repugnant to the constitution, or to a law of the United States made in pursuance thereof." *Osborn*, 22 U.S. at 859. As Chief Justice Marshall explained,

"it is the province of a Court of equity to arrest the injury, and prevent the wrong." *Id.* at 845. The exercise of that remedy "is to vindicate the supremacy of the constitution, and to maintain the integrity of the powers and rights which it confers." *Allen v. Baltimore & O. R. Co.*, 114 U.S. 311, 316 (1885).

Osborn's holding that "circuit courts of the United States will restrain a state officer from executing an unconstitutional statute of the state has never been departed from," *Pennoyer v. McConnaughey*, 140 U.S. 1, 12 (1891) and, together with *Ex Parte Young*, 209 U.S. 123 (1908), reflects that "certain suits for declaratory or injunctive relief against state officers must therefore be permitted if the Constitution is to remain the supreme law of the land." *Alden v. Maine*, 527 U.S. 706, 747 (1999). As the Court has long recognized, "the availability of prospective relief gives life to the Supremacy Clause. Remedies designed to end a continuing violation of federal law are necessary to vindicate the federal interest in assuring the supremacy of that law." *Green v. Mansour*, 474 U.S. 64, 68 (1985).

Armstrong and his *amici* concede, as they must, that there is a long history of federal courts granting equitable relief in preemption cases to vindicate the guarantee of the Supremacy Clause that federal law is superior in force to state law, *see* Pet'rs Br. at 40-41, 43-44; U.S. Br. at 20 (recognizing that "the ability of private parties to obtain protection in the face of state compulsion that violates federal law has considerable historical grounding"), but they argue that private parties should not be able to obtain this type of protection in this case. According to Armstrong and the Solicitor General, the federal courts' equita-

ble powers should be viewed as limited to suits brought as "an anticipatory defense to state enforcement proceedings," Pet'rs Br. at 40; U.S. Br. at 20. But neither Armstrong nor the Solicitor General offers either Framing-era evidence or court precedents to support the suggestion that the historical power of equitable courts was so limited and, as discussed above, it was not.[3] Armstrong's arguments would leave courts powerless to enforce the supremacy of federal law in this and other cases, effectively making state law supreme over federal. That cannot be what the Supremacy Clause means.

The Supremacy Clause makes *all* federal laws enacted pursuant to Congress's enumerated powers the supreme law of the land, not simply a fraction of them. There is no basis in constitutional text and history, this Court's precedent from *Osborn* on, or equity's historic mission of "[p]revention of impending injury by unlawful action," *Pierce v. Soc'y of Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 536 (1925), for carving out an exception to the courts' constitutional responsibility to enforce the Supremacy Clause and maintain the federal-state balance. Plaintiffs, no less than others challenging state action

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[3] *Amici* NGA and Council of State Governments also concede that equity can provide private parties a right to seek redress for unconstitutional action, *see* NGA et al. Br. at 26, but argues that "under equity, only negative injunctive relief was permitted," *id.* at 29. This argument either misunderstands the nature of "negative injunctive relief" or the relief Respondents seek here. All Respondents seek is an injunction *prohibiting* the State from violating the Medicaid statute. Such equitable relief is clearly of the type that would have been available at the Framing. *See supra* at 18-19.

as contrary to federal law, are entitled to their day in court to present their claims.

III. SPENDING CLAUSE LEGISLATION IS ENTITLED TO THE SAME PREEMPTIVE FORCE AS OTHER EXERCISES OF CONGRESS' ENUMERATED POWERS.

Fundamental constitutional principles of federal supremacy apply with full force to legislation, such as the Medicaid Act involved in this case, enacted pursuant to Congress's powers under the Spending Clause. Spending Clause enactments, like statutes passed to effectuate other enumerated powers, are the supreme law of the land.

1. Providing Congress the power to tax and spend was of central importance to the drafters of our Constitution: they had witnessed the disastrous consequences of the Articles of Confederation's failure to provide for such a power. Under the Articles of Confederation, Congress could raise money only by making requests to the States, but "State governments had often failed to provide the funds that the Confederation demanded of them. Without a strong revenue stream, vital federal functions were withering." Amar, *America's Constitution*, *supra*, at 106. Indeed, this created such an ineffectual central government that, according to George Washington, it nearly cost Americans victory in the Revolutionary War, and he lamented the dire situation in which the soldiers had been placed as a result of Congress's inability to levy taxes to support the Army. *See* Letter from George Washington to Joseph Jones (May 31, 1780), *in* 18 *The Writings of George Washington* 452, 453 (John C. Fitzpatrick ed., 1937); *see also* Circular to State Gov-

ernments (Oct. 18, 1780), *in Washington: Writings* 393, 393 (John Rhodehamel ed., 1997); Letter from George Washington to Lund Washington (March 19, 1783), *in Washington: Writings* 502, 502-03 (John Rhodehamel ed., 1997).

This historical foundation explains why the Spending Clause is the first and one of the most sweeping powers the Constitution confers upon Congress, providing the power "[t]o lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States." U.S. Const. art. I, § 8, cl. 1. The power to tax and spend for the common defense and general welfare is "an indispensible ingredient in every constitution," The Federalist No. 30, *supra*, at 156 (Alexander Hamilton), and it was essential for the Constitution to "embrace a provision for the support of the national civic list; for the payment of the national debts contracted, or that may be contracted; and, in general, for all those matters which will call for disbursements out of the national treasury." *Id.*

The Framers recognized that "government should be able to command all the resources of the country; because no man can tell what our exigencies may be. Government must therefore be able to command the whole power of the purse " 2 *Elliot's Debates*, *supra*, at 191. Recognizing that "money is the nerve – the life and soul of a government," 3 *Elliot's Debates*, *supra*, at 115, and that which "enables it to perform its most essential functions," The Federalist 30, *supra*, at 156 (Alexander Hamilton), the Convention wrote the Spending Clause in the broadest terms possible, empowering the government to spend money to provide for the general welfare of the

United States. As Alexander Hamilton observed, "The phrase is as comprehensive as any that could have been used [T]his necessarily embraces a vast variety of particulars, which are susceptible neither of specification nor of definition." Alexander Hamilton, *Report on Manufactures* (Dec. 5, 1791), *in* 10 *The Papers of Alexander Hamilton* 252, 252-56 (Harold C. Syrett & Jacob E. Cooke eds., 1966).

2. Consistent with this text and history, this Court has held that Congress may use its Spending Clause authority "to grant federal funds to the States" and may impose legally enforceable conditions on the States to "ensure that the funds are used by the States to 'provide for the general Welfare' in the manner Congress intended." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2601, 2602 (2012). In a long line of cases, this Court has repeatedly applied the Supremacy Clause to give preemptive force to congressional legislation under the Spending Clause imposing conditions on states' receipt of federal funding, ensuring that states do not act in conflict with federal law. *See, e.g.*, *Wos v. E.M.A.*, 133 S. Ct. 1391, 1398-99 (2013); *Dalton v. Little Rock Family Planning Servs.*, 516 U.S. 474, 476-77 (1996); *Bennett v. Arkansas*, 485 U.S. 395, 397-98 (1988); *Rosado v. Wyman*, 397 U.S. 397, 420-23 (1970); *King v. Smith*, 392 U.S. 309, 333 n.34 (1968). As this string of rulings reflects, "[c]onditional spending statutes are no less 'law' than any other kind of federal legislation," Samuel R. Bagenstos, *Spending Clause Litigation in the Roberts Court*, 58 Duke L.J. 345, 391 (2008). There is no "Spending Clause" exception to the Supremacy Clause.

Thus, while Spending Clause legislation is "'much in the nature of a contract,'" *Nat'l Fed'n of Indep. Bus.*, 132 S. Ct. at 2602 (quoting *Barnes v. Gorman*, 536 U.S. 181, 186 (2002) (emphasis omitted)), this Court fulfills its obligation to maintain the federal-state balance by holding states to their bargain. Here, Idaho agreed to abide by the federal requirement to ensure that Medicaid "payments are consistent with efficiency, economy, and quality of care," 42 U.S.C. 1396a(a)(30)(A), but chose to set artificially low reimbursement rates for purely budgetary reasons. Indeed, despite cost studies establishing that rates were too low, the Idaho legislature refused to increase rates to bring them into compliance with federal law. In these circumstances, the court of appeals properly exercised its historic role in maintaining the federal-state balance by holding the state's action contrary to the supremacy of federal law.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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